THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.29194 of 1997

Dated 21-03-2007

Between:
V.Varaprasad Rao.

..... PETITIONER

AND

The Director, Central Bureau of Worker's Education, Gokulpeta (West), High Court Road, Nagpur and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.29194 of 1997

O R D E R:

In this writ petition, the petitioner questions the order of the third respondent dated 23-10-1996, whereby the second respondent was informed that the petitioner, in his representation dated 12-07-1996, had not raised any new point but had repeated the points that had already been raised in his earlier representation, that this Court in its order dated 27-02-1996 had held that the petitioner should be given an opportunity to file a representation to the respondents for regularization of his services in the post of attender from the date of his original appointment but had not given any specific direction that his past service as an attender should be counted by the Central Board of Worker's Education, that from the existing rules, it was not possible to count his previous service at Rajahmundry and that the appointment order would be issued to the petitioner incorporating the relevant conditions as prescribed in the letter dated 14-06-1996.

Facts, in brief, are that the petitioner claims to have been appointed as a full time office attendant in the Central Board of Worker's Education on 03-01-1970 on his name being sponsored by the Employment Exchange and to have been paid a consolidated amount of Rs.67/- per month till he was removed from service on 03-07-1970 and was reappointed in the same place on 18-06-1971 and continued as such till
10-05-1972. The petitioner claims to have been appointed as a full time office attendant on 21-01-1972 and to have continued in the said post. While the petitioner is said to have paid a consolidated pay initially, his pay was enhanced periodically. Petitioner contends that though he had worked for more than 22 years on a consolidated pay, since his representations to the respondents to regularize his services had not seen the light of the day, he filed W.P.No.14257 of 1987, which was admitted on 25-09-1987. During the pendency of the aforesaid writ petition, the second respondent passed orders on 09-03-1993 dispensing with the services of the petitioner. Aggrieved thereby, he filed W.P.No.3103 of 1993. Both these

writ petitions were disposed of by a common order on 19-02-1996. Pursuant thereto, the petitioner was posted as a peon in the Worker's Education Centre at Visakhapatnam on a permanent and regular basis. This Court, by its order dated 19-02-1996, had permitted the petitioner to submit a representation to the respondents for regularization of his services in the old post of attender. Petitioner submitted his representation claiming regularization of his services with effect from 03-01-1970, on which date he was appointed as a full time office attendant. On the ground that no action was taken on the representation submitted by the petitioner pursuant to the orders of this Court, he filed W.P.No.19193 of 1996 seeking regularization of his services. The second respondent issued a letter dated 19-11-1996 informing the petitioner that he had received a letter dated 23-10-1996 in response to the representation of the petitioner intimating that it was not possible to count his previous service and accordingly his representation had been rejected. Petitioner contends that a copy of the proceedings of the third respondent dated 23-10-1996 was not served on him.

While matters stood thus, W.P.No.19193 of 1996 was disposed of on 18-06-1997 with a direction to dispose of the petitioner's representation after giving him a reasonable opportunity and, in default, he would be deemed to have been absorbed into regular service from the date on which he filed W.P.No.14257 of 1987. According to the petitioner, pursuant to the directions of this Court in W.P.No.19193 of 1996, the third respondent intimated him, vide proceedings dated 02-09-1997, to attend Head Office at Nagpur to put forth his grievance and when he approached the first respondent, he was informed that the meeting was concluded and a decision had already been taken vide proceedings dated
19-11-1996 and 16-12-1996.

Sri M.R.Tagore, learned counsel for the petitioner, would seek to challenge the impugned order dated 23-10-1996, on the ground that, while the respondents were required to independently examine the petitioner's claim for regularization of his services from the date of his initial

appointment on
03-01-1970 on merits, they had merely rejected his case on the ground that there was no positive direction from this Court to count his previous service from 03-01-1970 for the purpose of reckoning his service as an attender. Learned counsel would submit that since this Court had directed the respondents to consider the petitioner's representation, the respondents ought to have applied their mind independently to the facts and circumstances of the case and to have decided whether or not the petitioner was entitled to seek regularization as an attender from the date of his initial appointment. According to the learned counsel, the order rejecting the petitioner's case on the ground that there was no direction from this Court to take into account his past service reveals non-application of mind on the part of the respondents and is liable to be quashed.

In the counter affidavit filed on behalf of the respondents, it is stated that the petitioner's representation was considered sympathetically and since his job was purely on contingent basis, the administration could not do anything under the existing rules. It is stated that the respondents were not bound to consider the petitioner's case for regularization because sanction, for the continuance of the post at the Sub-Regional Centre, was issued every year to the concerned Regional Directorate from 1st March to 28/29 February or till the Sub-Regional Centre ceased to function and that the Government had every power to abolish the post whenever there was no sufficient work. Respondents would submit that the petitioner was paid a consolidated amount from the office contingent funds.

A perusal of the proceedings dated 23-10-1996 would show that, while the third respondent had taken note of the fact that this Court, in its order dated 27-02-1996, had not given any specific direction that the petitioner's past service as an attender should be counted by the Central Board of Workers Education, he had also specifically stated that as per the existing rules, it was not possible to count the previous service of the petitioner, Ex-attender of the Sub-Regional Centre at Rajahmundry, and

therefore, he was required to be issued appointment orders incorporating the relevant conditions. Rejection of the petitioner's request for reckoning his previous service is not merely on the ground that there was no specific direction from this Court that his past service as an attender should be counted but also on the ground that as per the existing rules, it was not possible to count his previous service. The petitioner's request for considering his past service had been examined by the respondents on merits and his representation, for having his past service reckoned, was rejected. The proceedings dated 23-10-1996 was not communicated earlier to the petitioner, which resulted in a subsequent order being passed by this Court in W.P.No.19193 of 1996 dated 18-06-1997, wherein a pre-emptory direction was given to the respondents to comply with the earlier direction of this Court in W.P.Nos.14257 of 1987 & 3103 of 1993 to dispose of the petitioner's representation within four months. Since the petitioner's representation had already been disposed of, he cannot contend that he is entitled under the subsequent orders of this Court in W.P.No.19193 of 1996 dated 18-06-1996 to be regularized with effect from the date on which he filed W.P.No.14257 of 1997. No specific provision, which confers any right on the petitioner to claim regularization from the date of his initial appointment, is brought to the notice of this Court. The law laid down by the Supreme Court in **Secretary, State of Karnataka v. Umadevi**[1], would, in fact, disentitle daily wage employees from seeking regularization. In such circumstances, the petitioner who was already regularized in service cannot be heard to say that his services should be regularized from the date of his initial appointment on consolidated wages.

The Writ Petition fails and is accordingly dismissed. No order as to costs.

_____

21-03-2007

usd

-

[1] 2006(4) SCC 1